IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 421 of 200

Date of Decision: 26-12-2006.

State of H.P. and others. Petitioners.

Versus

Sohan Lal. Respondent.

Coram
Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice S.S.Thakur, J.

Whether approved for reporting[1]?

For the petitioners : **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. Advocate General.**

For the respondent : **Shri Ashok Sharma, Advocate, vice Shri Suresh Bhardwaj, Advocate.**

SURINDER SINGH, J (oral)

In this writ petition, the petitioners have assailed the order dated July 8, 1999, passed by learned Administrative Tribunal, H.P, whereby the learned Tribunal has directed the petitioners, herein, to exempt the respondent from passing the Departmental Examination on attaining his age of 50 years and to grant the annual increment (s) from time to time, till his retirement along with the benefit of re-fixation of his pension.

Facts, in short, are that the respondent was a Patwari and was accepted as Kanungo against promotion quota along with others on the recommendations of the Departmental Promotion

[1] Whether reporters of the Local papers are allowed to see the judgment?

Committee vide order dated February 5, 1982 (Annexure-P1) which contained condition No.2 as follows:

> "2. The above candidates shall have to qualify the Departmental Examination of Kanungos within the period prescribed under the rules. The candidates who have already qualified this examination shall, however, furnish authentic proof of their having qualified the examination within 15 days from the receipt of this order".
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> (Emphasis supplied)

Whereas, para 2 (3) (b) of the Himachal Land Records Manual 1951, inter alia, provides that the names of the candidates, who fail to pass the Kanungo Examination within three years of the date of acceptance, unless there are special reasons to the satisfaction of the Financial Commissioner for not doing so and subject to the further condition that no candidate shall be allowed to appear in the examination more than three times, should be struck off, of the register. Whereas Part-III of the Himachal Pradesh Kanungo Service Rules, 1951 contains the conditions of service and Rule 5 (ii) thereof, (Annexure-P5), makes incumbent upon the person so appointed to the Service to pass the examination and undergo the training prescribed in chapter 2 of the Land Record Manual with a proviso added to it that the Financial Commissioner may for special reasons, to be recorded in writing, wave any of the provisions of this rule. The consequences for not passing the examination is given in the

Circular No.2-56/62-Rev.A.II Government of H.P. (Revenue Deptt.) dated 15-12-83 (Annexure-P17) as follows:

> "i) No person shall be entitled to get the annual increment unless he qualifies the Kanungo examination. The increment will be allowed to the Kanungo candidates after their passing the examination and not from the earlier date. If Kanungo candidates qualify the examination within the prescribed period, they may, however, be allowed to earn their increment from the date of their appointment as such.
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> ii) Un-qualified kanungo candidates should be reverted back immediately when they fail to pass the examination within the prescribed period".

It is an admitted fact that the respondent was promoted as Kanungo purely on temporary basis vide Annexure-P2 dated March 11, 1982 and he was required to pass the Departmental Examination of Kanungo within three years from the date of his acceptance by availing not more than three chances. The respondent appeared in the said Examination in the Month of May, 1984. He cleared three papers but failed in Paper No. 3 and was thus, required to appear again but instead of doing so, he opted for seeking exemption and made an application seeking exemption by pressing into service Rule-5, aforesaid. His case was recommended by the Deputy Commissioner vide letter dated 12-11-1986 addressed to the Director land Records but his request was rejected by the Financial Commissioner, whereas, exemption was granted to his junior Shri Gobind Ram vide letter dated

21.4.1988 (Annexure-P7). The matter was again referred by the Deputy Commissioner to the Director, Land Records for re-consideration vide his letter dated August 17, 1988, Annexure-P9 with his recommendations. Again, it did not find favour with the Director Land Records and the request was declined on the ground that the respondent was promoted without qualifying the Departmental Examination which was irregular and he stood retired (Annexure-P10). Thus the respondent filed O.A. No. 984 of 1996 which was allowed on the ground that the rejection of the representation of the applicant was arbitrary and the present petitioners were directed to exempt the respondent from passing the Departmental Examination after his attaining the age of 50 years, it further directed to grant him annual increments from the date he attained the age of 50 years till he retired with other consequential benefits as aforesaid.

Feeling aggrieved and dis-satisfied by the impugned order, the instant petition has been filed by the petitioner assailing the order of the learned Tribunal being wrong, illegal and contrary to the rules.

Reply was also filed by the respondent.

We have heard Shri R.M. Bisht, learned Deputy Advocate General for the petitioners and Shri Ashok Sharma, Advocate, for the respondent and have also gone through the record in meticulous details.

As already stated above, the respondent had three opportunities to appear in the Departmental Examination but he availed one and failed in paper No.3. Thereafter, he opted to seek the exemption which did not find favour with the higher authorities

as stated above. On the perusal of the reply filed by the respondent no. 3, it is evident that right from the year 1982 to 1991, no increment was granted to the respondent while in service as Patwari and also as Kanungo and also while calculating his pension whereas, he had remained as Kanungo for nine years. Virtually, he was not given any benefit of the service rendered as Kanungo and also as Patwari. The representation of the respondent seeking exemption was also not decided for about two years even he had crossed the age of fifty years.

It is an admitted case of the Petitioners that Shri Govind Ram who was junior to the respondent and was an accepted Kanungo candidate against promotion quota, which fact is also substantiated by Annexure-P1 dated 5.2.1982, was granted the exemption to appear in the Departmental Examination, whereas, the respondent was not accorded such exemption as is evident from Annexure-R2=Annexure-P7. Both the candidates were similarly situated and no reason has been assigned as to why the case of the respondent was rejected. Therefore, in these circumstances, we fail to understand, when there was nothing adverse against the respondent, then it is not understood why the respondent was discriminated despite the recommendations of the Deputy Commissioner in his favour. Nothing has been shown to us that the record of the respondent was not good enough or adverse to him or that there were sufficient reasons for rejecting his representation or not granting the exemption. Otherwise also the exemption sought by the respondent is only from the date he attained the age of fifty years which was otherwise permissible under the rules/instructions. Therefore, in these circumstances, the

respondent was discriminated against vis-à-vis similarly situated person (s). Thus the case of the respondent cannot be segregated from that of Shri Gobind Ram aforesaid and it does not lie in the mouth of the petitioners that there was no specific provision in the rules for granting exemption. If that being so, then how and under what rule or provision Sh. Gobind Ram was granted exemption. Therefore we do not find anything for our indulgence in the impugned order Annexure-P15 passed on 8-7-1999 by the learned Administrative Tribunal. Accordingly the petition is dismissed. No order as to costs.

(Deepak Gupta), J.

(Surinder Singh), J.

December 26, 2006
(BM)